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No. 478

In the Supreme Court of the United States

OCTOBER TERM, 1967

AMALGAMATED FOOD EMPLOYEES UNION LOCAL 590, ET AL., PETITIONERS

v.

LOCAL VALLEY PLAZA, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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INTEREST OF THE NATIONAL LABOR RELATIONS BOARD

Certiorari was granted in this case on October 23, 1967. The basic questions presented are: (1) whether an abridgment of freedom of speech resulted from a State court's injunction, on trespass grounds, of peaceful picketing by non-employee union representatives conducted at a retail store located in a shopping center, for the purpose of informing the public of the store's non-union status; and (2) whether the State court was without jurisdiction to enjoin such picketing because the conduct is subject to regulation under the National Labor Relations Act, and thus within the exclusive primary jurisdiction of the Na-

tional Labor Relations Board.[1] Although the first question is important, we believe that there is no occasion for the Court to reach it here. For, as we shall show, the preemption issue requires reversal of the judgment below. In view of the strong interest of the National Labor Relations Board in the preemption question, we think it appropriate to limit this brief to that issue. In the Board's view, State court regulation of the kind of activity involved here would impair the uniform federal labor policy embodied in the National Labor Relations Act, and would impede the Board's administration of that policy.

STATEMENT

The underlying facts adduced in the hearing before the trial court are as follows: Logan Valley Mall is a large, new shopping center owned by Logan Valley Plaza, Inc. ("Logan") (R. 87; 41–42).[2] In December 1965, at the time of the events here involved, the shopping center had leased space to two tenants who were engaged in business there—Weis Markets, Inc. ("Weis"), which operates a supermarket for the sale of food and sundry household articles, and Sears, Roebuck & Co., which operates a department store and an automobile service station (R. 88). Other tenants were expected (R. 51).[3]

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[1] This second question was left open in *Meat Cutters* v. *Fairlawn Meats*, 353 U.S. 20, 24.

[2] "R." references are to the certified record on file with the Clerk of this Court.

[3] At present there are 15 additional tenants (Pet. 4, n. 2).

The shopping center is situated in Logan Township, near Altoona, Pennsylvania, at the intersection of two public highways—Plank Road to the east and Good's Lane to the south (R. 86, 87). Plank Road is a heavily traveled highway, with cars moving at high speed (R. 45). The shopping center is separated from the highways by earthen embankments unbroken except for five paved entrances (R. 88). The distance from the highway to the Weis store is 450–500 feet at entrance 5, which is located on Plank Road and is the main entrance to the shopping center (R. 39, 43, 60). Between the entrances and the Weis store there are extensive parking areas, with parking spaces and driveways demarcated on the ground. These areas constitute common parking facilities for all stores in the center. (R. 88.) The Weis facility consists of an enclosed modern market building with an open, but covered, porch running along its front, and a pick-up zone directly along the porch for loading purchased goods into customers' cars (R. 88).

On December 8, 1965, Weis opened for business, employing non-union personnel (R. 89; 28). A few days later, Weis posted a sign between its entrance and exit doors reading: "No trespassing or soliciting is allowed on Weis Market porch or parking lot by anyone except Weis employees without the consent of the management" (R. 33).

Beginning on December 17, 1965, pickets, who were members of petitioner Amalgamated Food Employees Union, Local 590 ("the Union"), peacefully walked in front of the Weis store, usually in the parcel pick-up zone (R. 54–55). The pickets, who ranged in number

from four to thirteen, wore placards stating: "Weis Market is Non-Union, these employees are not receiving union wages or other union benefits. *Amalgamated Food Employees* Union Local 590" (R. 89; 29, 32). None of the pickets was employed by Weis; all were employees of neighboring supermarkets (R. 89; 66–67).

Ten days after the picketing began, Weis and Logan obtained from a State court an *ex parte* injunction prohibiting the Union, *inter alia,* from (R. 20–21): (1) picketing and trespassing on Weis's private property, including the store, the porch, and the parcel pick-up area; and (2) picketing and trespassing on Logan's private property including the parking area, and all entrances and exits leading to that area.

After a hearing, the court continued the injunction (R. 100).[4] The court held that the picketing, although peaceful, constituted a trespass under State law, since it was conducted on private property by persons who were not invitees of the property owner or his lessee (R. 94–96). The court further found that the object of the picketing was to force Weis to require its employees to become members of the Union, a purpose which was unlawful under State law (R. 96–97).

On appeal, the Supreme Court of Pennsylvania (with three Justices dissenting) affirmed, on the

[4] The court indicated that the injunction did not preclude picketing on the highway embankments (R. 98). Accordingly, after the injunction issued, picketing was conducted on the embankments adjacent to the shopping center entrances (R. 62).

ground that the picketing constituted a trespass under State law (R. 101–111).

SUMMARY OF ARGUMENT

Under this Court's decisions, when an activity is "arguably subject" to federal regulation under the National Labor Relations Act, a State court must defer to the exclusive primary jurisdiction of the National Labor Relations Board. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 245. It is plain that the picketing involved here is "arguably subject" to regulation under the Act. Such picketing might violate Section 8(b)(7)(C) of the Act, which bars organizational or recognitional picketing under certain conditions, or Section 8(b)(4)(B), which bars picketing directed at neutral, secondary employers. On the other hand, if the picketing were not barred by those provisions, it might well be protected by Section 7 of the Act, which safeguards the right to engage in peaceful picketing, or be within the area which Congress intended to leave to the free play of economic forces. The fact that the picketing was conducted within a shopping center on privately owned land does not remove it from the ambit of the Act. The Board is frequently required to make an accommodation between an employer's property rights and the employees' rights under Section 7 of the Act. *Republic Aviation Corp.* v. *National Labor Relations Board,* 324 U.S. 793; *National Labor Relations Board* v. *Babcock & Wilcox Co.,* 351 U.S. 105.

To subject the picketing here to State court jurisdiction would entail a real danger of creating the

very conflicts and "frustration of national purposes" which *Garmon* and the other preemption decisions of this Court have sought to avoid. The trial court found that the purpose of the picketing was to force Weis to compel his employees to join the Union. The Board, on the other hand, could well have found that the picketing was conducted for a different objective, which would not violate the National Labor Relations Act. Moreover, the State court proceeded on the premise that, since the shopping center was privately owned and neither its owner nor Weis had invited the pickets onto the premises, the pickets had committed a trespass under State law. Under the National Labor Relations Act, however, these circumstances would not be decisive of the Union's right to engage in organizational or related activity on such property.

In view of the comprehensive and careful manner in which the National Labor Relations Act regulates peaceful picketing, the activity here cannot be deemed "a merely peripheral concern" (*Garmon,* 359 U.S. at 243–244) of the Act. Moreover, although a State has a legitimate interest in protecting private property against trespass, that interest must be balanced against the potential harm to the regulatory scheme established by federal labor legislation. Here the State is merely undertaking to protect against the economic injury which would normally flow from peaceful picketing in a labor dispute, and such State regulation imposes a substantial danger of interference with federal regulation. In these circumstances, the federal statute may properly be deemed to bar the application of the State's trespass law.

ARGUMENT

THE STATE COURT LACKED JURISDICTION TO ENJOIN THE UNION'S PICKETING

A. THE PICKETING IS ARGUABLY SUBJECT TO THE NATIONAL LABOR RELATIONS ACT

In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245, this Court held that, when "an activity is arguably subject to § 7 or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." The picketing involved here is clearly within the ambit of the Act.[5]

Section 8(b)(7)(C) of the Act is pertinent in this regard. That provision prohibits recognitional or organizational picketing if conducted for more than 30 days without a representation petition having been filed with the Board (*infra*, pp. 20–21). Informational picketing, directed toward publicizing the employer's non-union status, is excepted from that restriction by the second proviso of Section 8(b)(7)(C), so long as no disruption of the employer's business results (*infra*, p. 21). Thus, if it were found that an object of the Union's picketing here was to obtain recognition from Weis as the representative of its employees, or to induce Weis employees to join the Union,[6] the picket-

[5] There is no question that the Board has, and would exercise, jurisdiction over Weis. See *Weis Markets, Inc.*, 116 NLRB 1993, 125 NLRB 148, 142 NLRB 708.

[6] The trial court found that the object of the picketing was to force Weis to compel his employees to join the Union (R. 96–

ing would violate Section 8(b)(7)(C) if (1) conducted for more than 30 days, (2) no representation petition were filed during that time, and (3) a stoppage of deliveries to the store resulted. On the other hand, if the picketing had no effect on deliveries and were conducted only for the purpose of informing the public of Weis's non-union status, it would be excepted from the prohibition of Section 8(b)(7)(C) by the second proviso, without regard to its duration or whether a representation petition were filed. Moreover, if the picketing were found not to be recognitional or organizational in nature, but merely to protest the failure of Weis to conform to working standards prevailing in the area, the picketing would not be within Section 8(b)(7)(C) at all. See *Houston Bldg. & Construction Trades Council (Claude Everett Construction Co.)*, 136 NLRB 321.

Similarly, since the shopping center where the picketing was conducted had employers other than Weis, the Union was obligated to conduct its picketing with due regard for the right of those other employers who could not lawfully be embroiled in the Union's dispute with Weis. If the Union failed to do so, its picketing might be for an objective which was secondary in nature and proscribed by Section 8(b)(4)(B) of the Act (*infra*, p. 20).[7]

97). Such picketing would violate Section 8(b)(2) of the Act (see *infra*, pp. 19–20).

[7] In *Sailors' Union of the Pacific*, 92 NLRB 547, the Board laid down evidentiary guides for determining whether picketing at a common situs was primary or secondary. It ruled that the picketing would be deemed primary if (*id.* at 549):

(a) The picketing is strictly limited to times when the

On the other hand, if the picketing were not barred by Section 8(b)(7)(C) or Section 8(b)(4)(B) of the Act, there is a strong likelihood that it would either be protected by Section 7 or within the area that Congress intended to leave to the free play of economic forces. Section 7 (*infra*, p. 19) guarantees to employees the right to engage in "concerted activities for the purpose of * * * mutual aid or protection * * *." Peaceful picketing to publicize an employer's non-union status or his failure to conform to working standards prevailing in the area is a traditional form of concerted activity for mutual aid or protection.[8] Moreover, as the Court pointed out in *National Labor Relations Board* v. *Fruit & Vegetable Packers*, 377 U.S. 58, where it concluded that Congress did not intend to proscribe all peaceful consumer picketing at the premises of employers not involved in the primary labor dispute: "Throughout the history of federal regulation of labor relations, Congress has consistently refused to prohibit peaceful picketing except where it is used as a means to achieve specific ends which experience has shown are undesirable"

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situs of dispute is located on the [common] * * * premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs;* (c) the picketing is limited to places reasonably close to the location of the *situs;* and (d) the picketing discloses clearly that the dispute is with the primary employer. * * *

[8] "The interdependence of economic interest of all engaged in the same industry has become a commonplace." *American Federation of Labor* v. *Swing*, 312 U.S. 321, 326. See also *National Labor Relations Board* v. *Drivers, Local 639* (*Curtis Bros.*), 362 U.S. 274, 282, and Section 13 of the Act (*infra*, p. 22).

(*id.* at 62).[9] In a similar vein, the Court previously stated that the "policy of the national Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing." *Garner* v. *Teamsters Union,* 346 U.S. 485, 499–500.

Nor is the picketing here removed from the ambit of the Act because it was conducted within a shopping center on privately-owned land instead of on a city street or sidewalk. Early in the administration of the Act, this Court recognized that the Board could make an accommodation between the employer's property rights and the employees' right to engage in organizational activity. Thus, it sustained the Board's ruling that an employer ban on union solicitation and literature distribution by employees in a plant and in the plant parking lot, during non-working time, constituted interference with organizational activity barred by Section 8(1) (now 8(a)(1)) of the Act (*infra,* p. 19). *Republic Aviation Corp.* v. *National Labor Relations Board,* 324 U.S. 793. Since that time, the Board has dealt with this problem of accommoda-

[9] Indeed, the prohibition against secondary activity—Section 8(b)(4)(B)—carries the express reservation that nothing in that ban "shall be construed to make unlawful * * * any primary strike or primary picketing" (*infra,* p. 20). *Steelworkers* v. *National Labor Relations Board* (*Carrier Corp.*), 376 U.S. 492, 498–499. And, as shown (*supra,* p. 8), Section 8(b)(7)(C) specifically excepts certain picketing whose purpose is merely to publicize the Union's views.

tion of these conflicting interests in a variety of contexts.[10]

To be sure, in *National Labor Relations Board* v. *Babcock & Wilcox Co.*, 351 U.S. 105, the Court held, contrary to the Board, that the employer did not unlawfully interfere with organizational activity by refusing to permit distribution of union literature by non-employee union organizers on a company-owned parking lot. But in so ruling the Court did not hold that the Board lacked power to balance the employer's property interests against the employees' organizational rights, but merely rejected the particular ac-

[10] See, *e.g.*, *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U.S. 226 (union organizer granted access to the only available meeting hall in a company town); *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147 (C.A. 6) (union organizer granted access to company-owned logging camp to solicit membership); *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. 2d 149 (C.A. 2) (union representative granted access to company ship to discuss grievances with unlicensed personnel); *Fafnir Bearing Co.* v. *National Labor Relations Board*, 362 F. 2d 716 (C.A. 2) (union representative granted access to plant to conduct an independent time study); *Marshall Field & Co.* v. *National Labor Relations Board*, 200 F. 2d 375, 380 (C.A. 7) (union solicitation by non-employees permitted on a company-owned street connecting two company buildings, where the street was generally used by the public); *Priced-Less Discount Foods, Inc., d/b/a Payless*, 162 NLRB No. 75, 64 LRRM 1065 (employer violated Section 8(a)(1) by excluding a non-employee union solicitor from a grocery store parking lot, which was open to the public and on which other forms of solicitation by non-employees were permitted).

See also *Steelworkers* v. *National Labor Relations Board* (*Carrier Corp.*), 376 U.S. 492, 499 (primary character of picketing not affected by the fact "that the picketed gate * * * was located on property owned by New York Centeral Railroad and not upon property owned by the primary employer").

commodation made by the Board in that case.[11] Indeed, the Court recognized that, even on the private property there involved, the employer could not bar non-employee union organizers if there were a showing (absent in *Babcock*) that "reasonable efforts by the union through other available channels of communication [would not] enable it to reach the employees with its message" or that the employer had discriminated "against the union by allowing other distribution" (*id.* at 112).[12]

In short, this picketing may be either protected or prohibited by the Act, and that cannot be determined unless and until the Board has had the opportunity to pass upon the question. Under *Garmon,* therefore, the National Labor Relations Act preempts the subject matter of this suit, and the State courts had no jurisdiction to entertain it.

B. TO SUBJECT THE PICKETING TO STATE COURT JURISDICTION WOULD ENTAIL A REAL DANGER OF UPSETTING THE FEDERAL REGULATORY SCHEME

As the Court pointed out in *Garmon, supra,* the basic consideration underlying its preemption deci-

[11] There the Court stated (351 U.S. at 112):

> This is not a problem of always open or always closed doors for union organization on company property. Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other * * *.

[12] See *General Dynamics Telecommunications, etc.*, 137 NLRB 1725 (employer could properly exclude non-employee union solicitors from a privately-owned road leading to the plant, where adequate opportunity existed for reaching the employees at the public road entrances to the plant and there was no showing that other solicitation had been permitted on the private road).

sions is that "Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience" (359 U.S. at 242). "To leave the States free to regulate conduct * * * plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law," the Court there further stated (*id.*, at 244). Nor does it matter whether the States act "through laws of broad general application rather than laws specifically directed toward the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes" (*ibid.*).

As we have shown (*supra*, pp. 9–10), protection of peaceful picketing is "plainly within the central aim of federal regulation * * *." To subject the picketing involved here to State court jurisdiction would thus entail a real danger of creating the very conflicts and "frustration of national purposes" which *Garmon* and the other preemption decisions of this Court have sought to avoid.

Here the trial court found that the purpose of the picketing was to force Weis to compel his employees to join the Union (R. 96–97). If the Board also found so, the picketing would violate Section 8(b)(2) of the Act (*infra*, p. 19), and the Board presumably would have issued a cease and desist order or sought a preliminary injunction under Section 10(j) (29 U.S.C.

160(j). See *Garner* v. *Teamsters Union*, 346 U.S. 485, 488–489. But ascertaining the objective of picketing is a difficult task involving subtle distinctions,[13] and the Board might find that here the objective was only recognitional or organizational in nature. In that event, Section 8(b)(7)(C) of the Act would apply, and the picketing would be illegal only under certain conditions (see *supra*, pp. 7–8). Moreover, if the Board found that the object was only to publicize the failure of Weis to conform to area working standards, the picketing (if it conformed to the *Sailors' Union* standards; see note 7, *supra*) would not violate the Act at all.

In short, the State court enjoined picketing which the Board might well have found would not have been unlawful under the Act. Moreover, the court, by prohibiting picketing in the vicinity of the Weis store

[13] The trial court stressed the fact that handbills accompanying the picketing called upon shoppers "Not To Patronize" Weis (R. 97–98). Whether the Board would have drawn the same inference from the handbills, or from the picket signs themselves, which merely stated that Weis was "Non-Union" and that its "employees are not receiving union wages or other union benefits" (R. 89), is doubtful. Moreover, the legend on the signs or the handbills is not necessarily decisive; the Board looks to the total circumstances. See *Operative Plasterers' & Cement Masons', Local 44 (Penny Construction Co.)*, 144 NLRB 1298, 1300; *Centralia Bldg. & Construction Trades Council* v. *National Labor Relations Board*, 363 F. 2d 699, 701 (C.A. D.C.); *National Labor Relations Board* v. *Local 3, Electrical Workers*, 362 F. 2d 232, 235–236 (C.A. 2). In upholding the lower court, the Pennsylvania Supreme Court did not ground its decision on the unlawfulness of the picketing as a matter of labor law, which the trial court had specifically found; the reviewing court found it unnecessary to pass on that question (R. 111).

within the shopping center and requiring that the pickets move to the edge of the highway (R. 98), made it more likely that the picketing would affect the other, neutral employers at the shopping center. This result is contrary to the congressional policy, reflected in Section 8(b)(4)(B) of the Act, "of shielding unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692. See *Retail Fruit & Vegetable Clerks* v. *National Labor Relations Board*, 249 F. 2d 591 (C.A. 9).

The action of the State court conflicts with the Act in other respects as well. In enjoining the picketing, the alternative ground of the trial court (and the basis on which the Supreme Court of Pennsylvania affirmed) was that, since the shopping center was privately owned and neither the owner of the center nor Weis had invited the pickets (who were nonemployees of Weis and thus "strangers") onto the premises, the pickets had committed a trespass under State law (R. 92, 95–96, 104–106). Under the Act, however, the facts that the picketing was on private property and that the pickets were not invitees would not be decisive of the union's right to conduct organizational or related activity on that property. As we have shown (*supra*, pp. 10–12), the Board would be required to balance the property rights involved against the employee rights involved. In making that accommodation, it would be relevant to consider such factors as the extent to which the property was open to members of the public and to other forms of solicitation,

and the availability of other channels through which the Union could communicate its message. Cf. *Schwartz-Torrance Investment Corp.* v. *Bakery & Confectionery Workers' Union,* 40 Cal. Rep. 233, 394 P. 2d 921, certiorari denied, 380 U.S. 906.[14] Upon a consideration of these factors, the Board could well have concluded that, notwithstanding the private ownership of the shopping center, Section 7 of the Act gave the Union representatives the right to engage in peaceful picketing there. Indeed, had Weis physically ejected the pickets, the Board might have found that such action violated Section 8(a)(1) of the Act. See *Payless, supra,* discussed in note 10, *supra.*

For these reasons here, no less than in *Garmon, supra,* a potential interference with the federal regulatory scheme can be avoided only by requiring that the State court defer to the exclusive primary jurisdiction of the Board.

C. THE SITUATION HERE DOES NOT FALL WITHIN THE EXCEPTIONS TO THE *GARMON* PRINCIPLE

In *Garmon, supra,* the Court recognized that "due regard for the presuppositions of our embracing federal system * * * has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act * * * [o]r where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that,

[14] In *Marsh* v. *Alabama,* 326 U.S. 501; 506, this Court noted: "The more an owner for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act" (359 U.S. at 243–244). See also *Linn* v. *United Plant Guard Workers*, 383 U.S. 53. In view, however, of the comprehensive and careful manner in which the Act regulates peaceful picketing, it can hardly be contended that the activity here involved constitutes "a merely peripheral concern" of the Act. Moreover, although a State has a legitimate interest in protecting private property against trespass, the interest of the State must be balanced against the potential harm to the regulatory scheme established by the Act.

Assume, for example, that outside organizers or pickets entered the selling area of the Weis store and disrupted its business. The interest of the State in providing a remedy for that conduct is so great and the danger of interference with the federal regulatory scheme is so slight [15] that the State would not be barred from acting, notwithstanding that a federal remedy might also be available.[16] On the other hand, here the State is not undertaking to protect its citizens against unwanted intruders in the customary sense, but only against the economic injury which would normally flow from peaceful picketing in a

[15] Cf. *Hanna Mining Co.* v. *Marine Engineers*, 382 U.S. 181, 190, 193; *Incres Steamship Co.* v. *Maritime Union*, 372 U.S. 24, 27.

[16] Such conduct would appear to violate Section 8(b)(1)(A) of the Act. See *Gimbel Bros.*, 100 NLRB 870, 876; *District 65, Retail, Wholesale & Department Store Union*, 157 NLRB 615, enforced, 375 F. 2d 745 (C.A. 2).

labor dispute,"[11] and State regulation plainly imposes a substantial danger of interference with the federal scheme. Accordingly, just as in *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, where the State was precluded from applying its antitrust laws to the union activity there involved, so here the State may not apply its trespass laws to the Union's picketing, consistent with federal regulation of labor matters and this Court's preemption decisions.

CONCLUSION

For these reasons, the judgment of the Supreme Court of Pennsylvania should be reversed, and the case should be remanded with directions to vacate the injunction and dismiss the complaint because of lack of jurisdiction over the subject matter.

Respectfully submitted.

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[11] Cf. *Linn* v. *Plant Guard Workers*, *supra*, 383 U.S. at 64: "'The unprovoked infliction of personal injuries during a period of labor unrest is neither to be expected nor to be justified, but economic loss inevitably attends work stoppages. Furthermore, damages for personal injuries may be assessed without regard to the merits of the labor controversy * * *'" (quoting from the dissenting opinion in *Auto Workers* v. *Russell*, 356 U.S. 634, 649).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership

in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the

employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees: (A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act, (B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or (C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subpargraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services. Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

* * * * *

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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